

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Griffin Sherbert	Team: Squad #7	CCRB Case #: 201801736	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Thursday, 02/22/2018 10:21 PM	Location of Incident: § 87(2)(b)	Precinct: 24	18 Mo. SOL 8/22/2019	EO SOL 8/22/2019	
Date/Time CV Reported Fri, 02/23/2018 1:06 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 03/02/2018 11:06 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Juan Carrero	00160	938174	PSA 6
2. POM Joseph Musarra	15791	957885	PSA 6

Officer(s)	Allegation	Investigator Recommendation
A.POM Juan Carrero	Force: Police Officer Juan Carrero used physical force against § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Musarra	Force: Police Officer Joseph Musarra used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Juan Carrero	Abuse: Police Officer Juan Carrero damaged § 87(2)(b)'s property.	§ 87(2)(b)
D.POM Joseph Musarra	Abuse: Police Officer Joseph Musarra damaged § 87(2)(b)'s property.	§ 87(2)(b)
E.POM Juan Carrero	Abuse: Police Officer Juan Carrero forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)
F.POM Joseph Musarra	Abuse: Police Officer Joseph Musarra forcibly removed § 87(2)(b) to the hospital.	§ 87(2)(b)

Case Summary

On February 23, 2018, Captain Lapkeung Lee of PSA 6, called the IAB Command Center to report the following complaint on behalf of § 87(2)(b). On March 2, 2018, the CCRB received this case from IAB.

On February 22, 2018, at approximately 10:21 p.m., § 87(2)(b) had an argument with her ex-boyfriend, § 87(2)(b) in his mother's, § 87(2)(b)'s, home, located at § 87(2)(b) in Manhattan. § 87(2)(b) left the apartment. Approximately ten minutes later, § 87(2)(b) returned and Police Officer Juan Carrero and Police Officer Joseph Musarra, both of PSA 6, ordered her to step away from the door. The officers allowed § 87(2)(b) to enter the apartment and collect some of her belongings. Inside the apartment, both officers allegedly threw § 87(2)(b) against the apartment wall, PO Carrero forcefully pushed her head against the wall, and PO Musarra handcuffed her (**Allegations A and B: Force**, § 87(2)(g)). The officers removed § 87(2)(b) from the apartment, PO Carrero allegedly dragged her guitar down the hallway causing damage to it, and both officers allegedly damaged her phone (**Allegations C and D: Abuse of Authority**, § 87(2)(g)). The officers escorted § 87(2)(b) outside, placed her into an ambulance, and she was removed to § 87(2)(b) (**Allegations E and F: Abuse of Authority**, § 87(2)(g)).

There is no video evidence in this case.

Findings and Recommendations

Allegation A—Force: Police Officer Juan Carrero used physical force against § 87(2)(b)

Allegation B—Force: Police Officer Joseph Musarra used physical force against § 87(2)(b)

The investigation obtained the second of two 911 calls § 87(2)(b) made the night of the incident. § 87(2)(b) told the operator that “the girl” who she had made a previous 911 call in regards to had returned to the apartment, was banging on the door, and she would not open the door until officers were present (BR09).

§ 87(2)(b) stated that § 87(2)(b) had been staying with her and § 87(2)(b) for approximately six months before the night of the incident (BR03). § 87(2)(b) complained that during § 87(2)(b) stay, she drank alcohol “24/7,” smoked inside that apartment even though § 87(2)(b) is an asthmatic, and fought with her and § 87(2)(b) whenever they asked her to find her own apartment. The night of the incident, § 87(2)(b) left the apartment after arguing with § 87(2)(b) about when she was going to move out. § 87(2)(b) called 911 and said that she wanted § 87(2)(b) removed from her home and asked for the police to respond. A few minutes later, PO Carrero and PO Musarra responded, told § 87(2)(b) to call 911 again once § 87(2)(b) returned, and left.

Ten minutes later, § 87(2)(b) looked out her window saw § 87(2)(b) returning, and called 911. § 87(2)(b) heard her knocking on the apartment door but did not answer until she heard the PO Carrero and PO Musarra respond and knock. § 87(2)(b) answered, and after confirming that § 87(2)(b) was the female she had called 911 in regards to earlier that evening, PO Carrero told § 87(2)(b) she was not allowed to stay at the apartment. § 87(2)(b) began screaming at the officers, said that she was going to enter the apartment, and attempted to push past the officers but they held her back. PO Carrero again told § 87(2)(b) that she was not allowed to enter. § 87(2)(b) replied that she had personal belongings inside, and the officers

told her that she could enter to collect a few things, but would need to leave after and return on a different date with a police escort to collect the remainder of her property.

§ 87(2)(b) and the officers entered, wherein § 87(2)(b) immediately began yelling at § 87(2)(b) swearing at the officers, and refused to collect her personal belongings. § 87(2)(b) and § 87(2)(b) went into the living room to let the officers handle the situation in the back bedroom. After approximately one hour, § 87(2)(b) overheard one of the officers tell § 87(2)(b) that they had already given her too many chances, and that she needed to collect her belongings now or leave. § 87(2)(b) did not comply and began calling 911 multiple times. After her last 911 call, the officers pulled § 87(2)(b) out of the apartment by her arms, which § 87(2)(b) tried to prevent by holding onto the door frames and walls within the apartment. § 87(2)(b) denied witnessing any officer throw § 87(2)(b) against the wall, and denied witnessing any officer push her face and head against the wall.

After § 87(2)(b) was removed from the apartment, § 87(2)(b) went to the open door and saw PO Carrero and PO Musarra attempting to pull § 87(2)(b) arms behind her back as she yelled, flailed her body, and pulled her arms away from the officers. After a few moments of struggling to handcuff § 87(2)(b) one of the officers told § 87(2)(b) to close the door and she complied.

Despite denying making any 911 calls on the date of the incident, the investigation obtained audio recordings of the five 911 calls § 87(2)(b) made that night (BR10-BR14). In the first call, § 87(2)(b) stated that her ex-boyfriend and his mother would not let her into the apartment she had been staying at since June 29, 2017. In the second call, § 87(2)(b) tells the operator that the officers on scene will not let her enter the apartment, complains that the officers keep bothering her by telling her to step away from the building, and wants different officers who “know housing laws” to respond. The third call begins with crosstalk and a male officer is heard asking, “Are you going to grab your stuff?” § 87(2)(b) informs the operator that she is in the apartment with the two officers who have told her she cannot stay at the apartment, complains that every time she calls 911 the same two officers respond, and requests a supervisor. In the fourth call, § 87(2)(b) states that the same two officers keep telling her to leave, and asks for additional officers and a supervisor to respond. The operator tells § 87(2)(b) that a supervisor has been notified, and advises her to listen to the officers. § 87(2)(b) interjects and says the officers are “putting hands on her,” and taking out their handcuffs. In the fifth call, § 87(2)(b) tells the operator that the two officers just removed her from the apartment and are throwing all of her stuff on the floor. The operator attempts to confirm the address, but § 87(2)(b) responds by stating that the officers took her phone and are choking her. § 87(2)(b) further tells the operator that she was getting her things from the apartment when the officers “decided to choke me out.” The operator connects § 87(2)(b) to the IAB Command Center, where she leaves a message stating that two officers who responded took the other party’s side, she is trying to collect her things but the officers will not let her, leaves her phone number and ends the call.

In § 87(2)(b) CCRB interview, she stated that on February 22, 2018, at approximately 10:15 p.m., after an argument with her ex-boyfriend, § 87(2)(b) she left the apartment to take a walk (BR01). Approximately 10 minutes later, § 87(2)(b) returned, however, as she was knocking on the door of § 87(2)(b) PO Carrero and PO Musarra approached her and told her to step away from the door. § 87(2)(b) opened the apartment door, and § 87(2)(b) argued with the officers regarding whether § 87(2)(b) could legally kick her out of the apartment. § 87(2)(b) told the officers that they could not remove her from the apartment

because they were not housing police officers. The officers replied that she could not stay at the apartment and escorted § 87(2)(b) downstairs.

Outside, § 87(2)(b) told the officers that she needed some of her personal belongings from the apartment, and the officers escorted her back upstairs to § 87(2)(b) § 87(2)(b) and the officers went into the back bedroom, wherein § 87(2)(b) began to collect her belongings, informed the officers that her unidentified mother works for the “§ 87(2)(b),” and attempted to call her mother with her cell phone. PO Carrero took the cell phone from § 87(2)(b) hand, grabbed her by the arms, forced her against the bedroom wall, and “smushed” her face against the wall. In a follow up call, § 87(2)(b) stated that both PO Carrero and PO Musarra grabbed her by the arms, threw her against the wall, and PO Carrero used his hand to forcefully push her face and head against the bedroom wall (BR02). § 87(2)(b) said both officers were trying to break her arms when they handcuffed her, which she described as pulling her arms too close together. § 87(2)(b) denied doing anything physical with her body while being handcuffed, denied drinking alcohol or taking any narcotics on the date of the incident, and denied calling 911 at any point during the incident. § 87(2)(b) also denied that PO Carrero or PO Musarra ever choked her and denied that she ever claimed an officer had choked her during the incident.

The officers pulled § 87(2)(b) from the apartment, dragged her down the hallway to the elevator, and held her in a standing position while in the elevator. When asked, § 87(2)(b) explained that the officers dragged her due to the fast pace at which they were walking, and propped her up in the elevator because she refused to stand.

TRI Report #§ 87(2)(b), and TRI Report #§ 87(2)(b), prepared by PO Carrero and PO Musarra in regards to this incident, report that § 87(2)(b) resisted, pushed, shoved, and used foot strikes against the officers, and that the officers suspected her of being intoxicated, having use drugs, and that she was an emotionally disturbed person (BR04). Both officers indicated that the only force used was physically restraining § 87(2)(b) in order to handcuff her, which they employed in defense of themselves, in defense of civilians present, in defense of their respective partner, and to overcome § 87(2)(b) resistance. The TRI reports conclude that § 87(2)(b) complained of pain in her left pinky finger and right thumb, was brought to the hospital, and diagnosed with minor contusions.

The ISAR prepared by Capt. Lee is consistent with the accounts of the officers and the minor injury § 87(2)(b) sustained (BR08). Capt. Lee interviewed § 87(2)(b) and § 87(2)(b) for the ISAR, and reported that § 87(2)(b) acknowledged drinking a beer that evening, and § 87(2)(b) stated § 87(2)(b) had three beers that evening. § 87(2)(b) told Capt. Lee that PO Carrero choked her by grabbing her by the throat, however, there were no marks or redness on § 87(2)(b) neck, § 87(2)(b) denied the officers choked § 87(2)(b) and her medical records indicate her breathing was normal and neck was supple (See Privileged Medical Documents, BR15).

PO Musarra stated that on February 22, 2018, at approximately 9:18 p.m., he and his partner, PO Carrero, received a job for a family dispute at the incident location, regarding an elderly female who wanted a younger female removed from her apartment (BR05). PO Musarra and his partner spoke with § 87(2)(b) who informed them that § 87(2)(b) had been staying in her apartment and refused to leave, that she excessively drank alcohol and smoked cigarettes inside causing § 87(2)(b) discomfort, and that she wanted § 87(2)(b) removed from the apartment. The officers advised § 87(2)(b) to call when § 87(2)(b) returned and left the scene.

Approximately one hour later, PO Musarra received a second job at the location for a family dispute. PO Musarra and his partner returned upstairs and observed § 87(2)(b) banging and kicking the door of § 87(2)(b) and holding a black plastic bag containing bottles of beer. PO Musarra and his partner approached, asked § 87(2)(b) to step away from the door, knocked on the door, and said, “Police.” § 87(2)(b) opened the door and confirmed that § 87(2)(b) was the younger female she wanted removed from her apartment. PO Musarra asked if she needed to gather any personal belongings from the apartment, and § 87(2)(b) replied no. PO Musarra informed § 87(2)(b) that if she did not need anything from the apartment at that moment, she would need to leave and retrieve her belongings on a later date. § 87(2)(b) became very angry and argued she could not be kicked out of the apartment. PO Musarra told § 87(2)(b) that if she was not on the lease she would have to leave. § 87(2)(b) argued with the officers and yelled at § 87(2)(b) for several minutes, and was escorted from the building.

Outside, § 87(2)(b) repeatedly called 911 and asked for the “real police” to respond. After making multiple 911 calls, § 87(2)(b) suddenly changed her mind and said she wanted to go upstairs and collect her things. The officers escorted § 87(2)(b) into the apartment, wherein she immediately became irate, removed her shoes, resumed yelling and arguing with § 87(2)(b). § 87(2)(b) repeatedly called 911, and threw various items around the apartment. The officers ordered § 87(2)(b) to collect her personal belongings but she refused several times. PO Musarra then ordered § 87(2)(b) to leave, and he and PO Carrero began to escort § 87(2)(b) from the apartment by walking behind her without touching her. However, once § 87(2)(b) exited, she attempted to get past the officers and reenter the apartment by pushing and kicking them. PO Musarra and PO Carrero grabbed § 87(2)(b) arms and brought her into the elevator, wherein she continued to kick and push the officers, as well as flailed her arms. Several of her kicks made contact with his legs. PO Musarra placed § 87(2)(b) up against the wall within the elevator in order to gain control over her movements and prevent any further resistance. PO Musarra and PO Carrero each grabbed one of § 87(2)(b) arms, pulled them behind her back, and handcuffed her. PO Musarra denied that he or PO Carrero slammed § 87(2)(b) head against the elevator wall.

PO Carrero’s statement was generally consistent with PO Musarra’s, with the addition of a few details. After § 87(2)(b) refused to collect her belongings, he escorted § 87(2)(b) from the apartment by walking behind her and gently pushing her from behind to keep her moving forward as she was still yelling at § 87(2)(b) and refusing to walk (BR06). PO Carrero had to repeatedly push § 87(2)(b) from behind, while PO Musarra pulled her by her arms from the front, because § 87(2)(b) repeatedly tried to remain in the apartment. PO Carrero denied that he or PO Musarra threw or pushed § 87(2)(b) against the apartment wall, denied that he pushed or slammed her face or head against the wall, and denied that she was handcuffed in the apartment.

PO Carrero stated that PO Musarra pushed § 87(2)(b) into the elevator as she was actively resisting. Inside the elevator, § 87(2)(b) refused to give the officers her hands, locked her arms in front of her chest, and kicked at the officers with several kicks making contact with PO Carrero’s shins. Consistent with his partner, PO Carrero said that they each grabbed one of § 87(2)(b) arms, pulled them behind her back, and placed her against the elevator wall in order to limit her resistance and handcuff her. PO Carrero denied that § 87(2)(b) face or head ever made contact with the elevator wall, denied that he or PO Musarra pushed or slammed her head against the elevator wall, and denied that § 87(2)(b) complained of any pain after being handcuffed.

Officers may use force when it is reasonable to ensure the safety of a member of service, a third person or otherwise protect life, or when it is reasonable to place to person in custody or to prevent escape from custody. In determining whether the use of force is reasonable, officers should consider the nature and severity of the crime or circumstances, the actions taken by the subject, the duration of the actions, the immediacy of the perceived threat or harm to the subject, officers, and/or bystanders, whether the subject is actively resisting custody, and whether the subject is apparently under the influence of a narcotic or stimulant which would affect the pain tolerance or increase the likelihood of violence. Patrol Guide, Procedure 221-01 (Board Review 07).

Patrol Guide Procedure 214-13 entitled Evictions, Repossessions, and Other Civil Process states that uniformed members of the service should be cognizant that incidents to which they respond may be the outgrowth of a civil process. The authority to break and enter pursuant to purely civil process such as legal repossessions, evictions, and civil commitments is given to the city marshal/sheriff.

Patrol Guide Procedure 214-12 entitled Unlawful Evictions states that the purpose of this law is to discourage, through the imposition of substantial criminal and civil penalties, unlawful evictions to occupants of dwelling units, by methods which often involve: 1. Force and violence. . The law makes it unlawful to evict or attempt to evict an occupant by a. Using or threatening to use force . . Unless a Warrant or Eviction or Government Order to Vacate has been executed, the protective provisions of this law apply in the following circumstances: b. When an individual has lawfully occupied a dwelling unit for thirty or more consecutive days. (Board Review 23)

Patrol Guide 221-01 states that officers may use force when it is reasonable to ensure the safety of a member of service, a third person or otherwise protect life, or when it is reasonable to place to person in custody or to prevent escape from custody. (Board Review 24)

§ 87(2)(g)

Allegation C—Abuse of Authority: Police Officer Juan Carrero damaged § 87(2)(b) property.

Allegation D—Abuse of Authority: Police Officer Joseph Musarra damaged § 87(2)(b) property.

After the officers removed her from the apartment, § 87(2)(b) said that PO Carrero removed her electric guitar from its case, dragged it down the hallway, and caused it damage

(BR01). § 87(2)(b) did not see the damage incurred, but rather heard the strings snapping and volume knobs breaking off as it was dragged, and then heard PO Carrero slam it on the floor. § 87(2)(b) said that the officers also damaged her cell phone and cracked the screen. During her interview, § 87(2)(b) showed the undersigned her cracked cell phone screen, however, she acknowledged it had pre-existing cracks, and could not describe how or when the officers specifically damaged her cell phone.

In the ISAR, Capt. Lee reported that § 87(2)(b) alleged that the officers removed her property from the apartment and intentionally damaged her guitar and cell phone by throwing them on the floor (BR08). Photos taken by Capt. Lee at § 87(2)(b) show § 87(2)(b) cell phone with cracks across a majority of its screen, and her electric guitar with three broken strings and two missing knobs (BR16-18). § 87(2)(b) denied the officers threw § 87(2)(b) property on the floor or caused the damage she alleged. PO Carrero and PO Musarra stated that § 87(2)(b) dropped her phone while they were handcuffing her, which was returned to her at the hospital.

PO Carrero stated that before she had to be escorted from the apartment, § 87(2)(b) was yelling at § 87(2)(b) because she had begun picking up her belongings and placing them outside (BR06). While exiting the apartment, § 87(2)(b) handed PO Carrero a few of § 87(2)(b) belongings, but had to put them on the floor to assist PO Musarra who was struggling to escort her into the elevator. PO Carrero thought he saw § 87(2)(b) guitar in the apartment, but did not know if he had personally recovered it, or whether the strings had snapped during § 87(2)(b) removal or had been snapped prior. PO Carrero denied that he or PO Musarra dragged the guitar down the hallway intentionally causing damage.

PO Musarra thought § 87(2)(b) took her purse and another personal item which could have been a guitar, however, he could not specifically recall what items she took with her (BR05). PO Musarra did not know what the initial state of § 87(2)(b) guitar was, did not know if the guitar strings were broken during her removal, and did not know if he personally removed her guitar from the apartment.

§ 87(2)(g)

§ 87(2)(g)

Allegation E—Abuse of Authority: Police Officer Juan Carrero forcibly removed § 87(2)(b) to the hospital.

Allegation F—Abuse of Authority: Police Officer Joseph Musarra forcibly removed § 87(2)(b) to the hospital.

After being handcuffed and removed from the apartment building, the officers brought § 87(2)(b) over to an ambulance and placed her inside (BR01). § 87(2)(b) said that the officers thought she was “either on drugs or was intoxicated,” but could not explain or describe what the officers said or did that led her to think that. PO Musarra rode in the ambulance with § 87(2)(b) and the EMTs to § 87(2)(b). At the hospital, § 87(2)(b) said that the medical staff saw she did not need to be in a hospital without providing further explanation. Capt. Lee

came and § 87(2)(b) provided a statement in regards to the incident. After being held for a few hours, § 87(2)(b) was released from § 87(2)(b) in the early morning of February 23, 2018.

TRI Report #§ 87(2)(b), and TRI Report #§ 87(2)(b), prepared by PO Carrero and PO Musarra in regards to this incident, report that the officers suspected § 87(2)(b) of being intoxicated, having use drugs, that she pushed and kicked the officers, that she was an emotionally disturbed person, and was removed to § 87(2)(b) for an evaluation (BR04).

AIDED Report § 87(2)(b), reported by PO Musarra and prepared by PO Carrero, reports that § 87(2)(b) was highly intoxicated, “acting extremely irate and iratic, (sic)” and was removed to § 87(2)(b) for an evaluation (BR19). The AIDED report notes that § 87(2)(b) had not attempted to harm herself or others, had not spoken of harming herself or others, and had not placed herself in a dangerous situation. The AIDED report concludes to note that § 87(2)(b) had verbally and physically threatened others, and the officers had suspected her of being under the influence of narcotics and alcohol, though the specific inebriants were marked unknown.

§ 87(2)(b) medical records obtained from § 87(2)(b) report that she was brought to the Emergency Department for an intoxication evaluation, and accompanied by the NYPD for safety as she had been combative prior to arrival (See Privileged Medical Documents, BR15). The medical records further report that § 87(2)(b) acknowledged drinking one beer that evening, denied taking any drugs, the attending medical professional noted that it was unclear why § 87(2)(b) was brought to the Emergency department, and that § 87(2)(b) was not clinically intoxicated. § 87(2)(b) was given an x-ray for her hand, which produced unremarkable results, and she was diagnosed with a contusion.

PO Carrero stated when he first spoke with § 87(2)(b) outside of § 87(2)(b) he deemed her to be intoxicated and an EDP, based upon smelling alcohol, specifically beer, on her breath, her carrying a more beer with her, and her belligerent behavior (BR06). PO Carrero could not articulate which specific drugs he thought § 87(2)(b) was under the influence of, but due to her “extremely” dilated pupils, and § 87(2)(b) informing him § 87(2)(b) used drugs, he suspected her to have taken drugs that evening. PO Carrero called for EMS due to his concern § 87(2)(b) could hurt herself or hurt § 87(2)(b) who told PO Carrero she was afraid of § 87(2)(b) EMS arrived, evaluated § 87(2)(b) and concurred with the officers’ assessment that she was intoxicated and emotionally disturbed.

PO Musarra’s statement was generally consistent with PO Carrero with a few additional details. PO Musarra stated that before § 87(2)(b) had returned to the apartment, § 87(2)(b) showed the officers the numerous beer bottles in the back bedroom where § 87(2)(b) stayed (BR05). PO Musarra also smelled alcohol on § 87(2)(b) breath throughout the incident, she acknowledged to him that she had been drinking that evening, and PO Musarra stated that, “she couldn’t even walk straight.” PO Musarra determined § 87(2)(b) to be an EDP based upon her irate emotional state, her screaming, pushing, and kicking the officers, and out of concern for her and § 87(2)(b)’s safety, who he described as an “elderly woman.” PO Musarra stated that he and PO Carrero called for EMS and informed their supervisor in regards. PO Musarra could not recall which supervisor was informed, and they did not respond.

An officer must take into protective custody, and have removed to the hospital in an ambulance, any person who appears to be mentally ill or temporarily deranged and is conducting

themselves in a manner which a police officer reasonably believes is likely to result in serious injury to themselves or others. Patrol Guide, Procedure 221-13 (BR20).

§ 87(2)(g)

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint that § 87(2)(b) has been party to.
- PO Carrero, a 13-year-member of service, has had three prior CCRB complaints filed against him, with a total of six allegations, none of which were substantiated. § 87(2)(g)
- PO Musarra, a three-year-member-of-service, has had one prior CCRB complaint filed against him, with a total of two allegations, none of which were substantiated. § 87(2)(g)

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of July 30, 2018, § 87(2)(b) has not filed a Notice of Claim with the NYC Comptroller's Office regarding this incident (BR21).
- § 87(2)(b)

Squad No.: 7

Investigator: _____

	Signature	Print Title & Name	Date
Squad Leader:	_____	_____	_____
	Signature	Print Title & Name	Date
Reviewer:	_____	_____	_____
	Signature	Print Title & Name	Date